

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT W. CABELL,

Plaintiff,

v.

ZORRO PRODUCTIONS, INC., JOHN GERTZ,
and STAGE ENTERTAINMENT LICENSED
PRODUCTIONS,

Defendants.

No. 2:13-cv-00449-RSM

ZPI DEFENDANTS' STATEMENT IN
RESPONSE TO CABELL'S MOTION
FOR LEAVE TO FILE UNDER SEAL

NOTE ON MOTION CALENDAR:
January 31, 2014

STATEMENT RE MOTION FOR
LEAVE TO FILE UNDER TO SEAL - 1
NO. 2:13-CV-00449-RSM

LAW OFFICES OF
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Defendants Zorro Productions, Inc. and John Gertz (hereinafter, the “ZPI Defendants”) hereby notify the Court that Plaintiff Robert W. Cabell’s (“Plaintiff”) Motion for Leave to File Under Seal (“Motion to Seal”), Dkt. No. 59, was mooted by way of an agreement amongst the parties. Plaintiff’s Motion to Seal sought leave to file under seal certain documents that the ZPI Defendants had marked as confidential under the operative protective order (Dkt. No. 33, Ex. G), as well as a memorandum that related information contained in those documents. Subsequent to the filing of the Motion to Seal, the parties conferred and agreed to publically file versions of documents that had been redacted to remove highly-sensitive information. *See* Praecipe as to Dkt. Nos. 60-61, filed concurrently herewith. As such, Plaintiff’s request to file unredacted versions of those documents, embodied in his Motion to Seal, is moot. Assuming the Praecipe is acceptable to the Court, there will no longer be any need for the Court to rule on Plaintiff’s Motion to Seal.

To the extent that ZPI Defendants’ response submission is still required to satisfy LCR 5(g)(3)(B), the applicable legal standard could have potentially required ZPI Defendants to meet a “compelling reasons” standard to obtain a court order sealing documents filed in opposition to the presently-pending motion to dismiss. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). The decision to seal documents is “one best left to the sound discretion of the trial court” upon consideration of “the relevant facts and circumstances of the particular case.” *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978). This Court previously entered an Order enunciating the “good cause” that existed for its entry of ZPI Defendants’ requested two-tiered protective order during the jurisdictional discovery and motions stage of proceedings in this matter, which this Court stated was “warranted to shield Defendants from the specific harm of providing proprietary information to a competitor.” Order, at 8:11-17 (Dkt. No. 54). The Order further indicated that this stage of the proceedings had only a limited purpose, addressing matters related to personal jurisdiction. *Id.* at 5:9-22. Such a limited-purpose proceeding was not directly addressed in *Kamakana, supra*.

1 Accordingly, the same reasoning that supported the Court's entry of its Order of October 2,
2 2013, could have further supported a court order keeping under seal the documents referenced
3 in Plaintiff's Motion to Seal. If this Court nevertheless denies Plaintiff's Motion to Seal, ZPI
4 Defendants would request that the Court discretionarily withdraw Dkt. Nos. 60-61 from the
5 record rather than unseal them, pursuant to LCR 5(g)(6). However, based on the parties'
6 agreement to Plaintiff's redacted filings that would replace via Praecipe the filings previously
7 in issue, ZPI Defendants respectfully submit that a ruling on Plaintiff's Motion to Seal is
8 simply unnecessary.

9 DATED this 29th day of January, 2014.

10 COZEN O'CONNOR

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STATEMENT RE MOTION FOR
LEAVE TO FILE UNDER TO SEAL - 3
NO. 2:13-CV-00449-RSM

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification to all parties of record.

DATED: January 29, 2014

COZEN O'CONNOR

By: /s/ Jan Young
Jan Young,
Legal Assistant to Michael D. Handler

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STATEMENT RE MOTION FOR
LEAVE TO FILE UNDER TO SEAL - 4
NO. 2:13-CV-00449-RSM

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